No. 82-1697

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1982

BOARD OF TRUSTEES OF CARPENTERS PENSION TRUST FUND OF NORTHERN CALIFORNIA,
Petitioner,

vs.

TONI REYES et al,
Respondents.

Respondent TONI REYES'

BRIEF IN OPPOSITION

to the Petition for a Writ of Certiorari to the United States Court of Appeals for the Ninth Circuit

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QUESTIONS PRESENTED FOR REVIEW

1. When an employee covered by an ERISA-regulated plan divorces his spouse, who under state domestic-relations law is an absolute owner of an interest in the plan's benefits, did Congress express in ERISA itself a clear intention to pre-empt recognition of the spouse's rights (as opposed to an intention to pre-empt state regulation of the worker-employer relationship)?

2. If wife, as an owner, is indeed a participant in the plan pursuant to ERISA, can it be said that Congress specifically intended that she alone be specially excluded from the general right of plan participants to receive attorneys' fees against ERISA-regulated plans pursuant to 29 USC §1132(g), where a trial court has specifically found such an award to be proper?

3. Is the plan, in now attempting to re-litigate these issues in federal court after unsuccessfully litigating them fully in state court, and not then petitioning this Court for relief, now bound by the doctrine of res judicata (an adequate non-federal ground), and therefore not entitled to litigate anew, in this Court and in this case, those settled questions?

REASONS WHY THE PETITION SHOULD BE DENIED

1. The decision below rests upon an adequate non-federal ground.

Petitioner has already fully litigated this issue in In re Marriage of Reyes, 5 Civil 3575, in the California Court of Appeal, which judgment petitioner itself has long since allowed to become final without timely petition for review in this Court. This reason alone is an adequate non-federal ground upon which this Court should now deny the petition. Vorbeck v. Whaley (8 Cir 1980) 620 F2d 191, 193.

2. The issue in this case has already been definitively, correctly and unanimously decided by the federal appellate courts, including this Court.

The issue herein is admittedly of major significance to plan administrators, family law litigants and attorneys, and others. Wife fully agrees with Petitioner that a definitive and unanimous rule is needed in this important field.

But petitioner already has that desired result. Every appellate court which has ruled on the question of whether Congress expressly intended in ERISA itself to pre-empt the traditional federal deference to state marital-property and family-support law has ruled the same way: no pre-emption. American Tel. & Tel. Co. v. Merry (2 Cir 1979) 592 F2d 118; Operating Engineers v. Zamborsky (9 Cir 1981) 650 F2d 197; Carpenters Pension Trust for Southern California v. Kronschnabel (1980) 632 F2d 745, cert den (1981) 453 US 922; Stone v. Stone (9 Cir 1980) 632 F2d 740, cert den (1981) 453 US 922 sub nom Seafarers International Union Pacific District-Pacific Maritime

Association Pension Plan v. Stone (#80-1403). And this Court has already so ruled: it dismissed the appeal in In re Marriage of Campa (1979) 89 Cal.App.3d 113, 152 Cal.Rptr. 362, app dism (1980) 444 US 1028. (See Hicks v. Miranda (1975) 422 US 332, 344.)

Petitioner says it wants a definitive ruling. It has already had several, including one from this Court. All have agreed with the decision below.

3. Petitioner's analogy to the military case is inapposite.

McCarty v. McCarty (1981) 453 US 210, and Ridgway v. Ridgway (1981) 454 US 46, stand only for the proposition that the special character of the federal military system pointed to an implicit Congressional mandate that effective military discipline

would be impossible were servicepersons to face a variety of marital-property laws in deciding whether to respond to orders to relocate. (Even this concern has, in light of recent legislative developments, proven too conservative.) These concerns of the military, of course, have no application to the far greater number of private, civilian workers governed by ERISA (such as Wife's former husband), who cannot be ordered to make an involuntary change of state residence.

It is significant that this Court's own denial of the petitions for certiorari in Stone and Kronschnabel, supra, came just one week after this Court's plenary decision in McCarty. It is more than obvious that the special circumstances of the military do not, and should not, control here.

4. The decision below does not conflict with any of this Court's own rulings.

Petitioner makes much of this Court's recent decision in Alessi v. Raybestos Manhattan, Inc. (1981) 451 US 504, regarding state workers' compensation procedures. Competing state remedies in favor of workers and against employers, of course, directly impede the federal statute's overall purpose: to provide uniform nationwide regulation of the delicate balance between the rights of a worker's family, on the one hand, and his employer or union, on the other. Striking down such state interference with that balance in no way implies, in law or in simple justice, that a spouse's own intrafamily rights, which do not adversely affect the employer, the union or the plan in any way, should not clearly be treated differently.

5. The decision below is the correct decision, and does not require that this Court expend its limited resources only to reach the same just result.

It has long been recognized by this Court that pre-emption by Congress of state domestic-relations law can never be presumed; it must be clearly stated. ERISA, of course, contains no such specific language.

It is also clear that recognition of the legitimate domestic-relations hegemony of the states requires a showing that a finding of pre-emption is necessary to avert "clear and major damage" to a federally-declared interest. There is obviously no such damage where an equal owner of a private, civilian retirement plan is confirmed her lawful share, in part to guard against her possibly becoming a public charge upon the federal taxpayer.

CONCLUSION

For the foregoing reasons, the petition for a writ of certiorari should be denied, and Respondent TONI REYES should be awarded her costs and fees pursuant to §502(g) against petitioner for her opposition to the petition.

Respectfully submitted,

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San Francisco
May 16, 1983